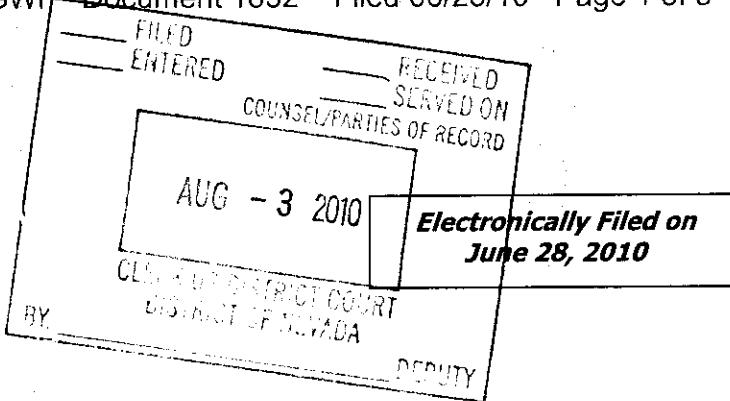


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## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

In re:

Case No. 2:07-CV-892-RCJ-GWF-BASE  
 and  
 Case No. 3:07-CV-241-RCJ-GWF

USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

3685 SAN FERNANDO LENDERS, LLC, et al.,

Plaintiffs,

v.

COMPASS USA SPE LLC, et al.,

Defendants.

**ORDER REGARDING THE  
 APPLICATION OF THE SUMMARY  
 JUDGMENT ORDER, DATED SEPTEMBER  
 18, 2009 [DOC. #1489]**

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1 Pursuant to the Court's request at the hearing held on April 8, 2010, the parties submitted  
2 additional briefing regarding the applicability of the Court's Order, dated September 18, 2009 [Doc.  
3 #1489] (the "Order"), to all the Loan Servicing Agreements ("LSAs") executed by the direct lenders  
4 and USA Commercial Mortgage Company ("USACM"). In the Order, the Court ruled, as a matter  
5 of law, that, under the compensation section of a "Type 4" LSA, the loan servicer was not entitled to  
6 collect default interest and late charges as servicing compensation on any loans for which the direct  
7 lenders have not received payment in full of the principal amount of the loans because such sums  
8 are not "collected from the Borrower," as was required by the LSA. The Court also ruled, as a  
9 matter of law, that the loan servicer was not entitled to collect default interest and late charges as  
10 servicing compensation directly from the direct lenders. The Court further ruled, as a matter of law,  
11 that the loan servicer was entitled under the compensation section of a "Type 4" LSA to one accrued  
12 annual servicing fee for each of the loans, to be calculated based on the ultimate collection amount,  
13 not the original principal amount of each of the loans, because the LSA provided that the loan  
14 servicer was entitled to "retain monthly . . . its annual servicing fee."

15 The Court having reviewed the pleadings and papers on file, and received the arguments of  
16 counsel at the hearing held on May 5, 2010,

17 IT IS HEREBY ORDERED that, because all the LSAs provide that the loan servicer is  
18 entitled to default interest and/or late charges only if such sums are "collected from the Borrower,"  
19 the ruling in the Order that the loan servicer is entitled to default interest and late charges only if the  
20 direct lenders are paid in full the principal amount of the loans applies equally to all the LSAs as a  
21 matter of law.

22 IT IS FURTHER ORDERED that, because the Court's foregoing ruling related to the loan  
23 servicer's entitlement to default interest and late charges is based on its interpretation of the LSAs,  
24 the application of payments provisions in the promissory notes for the loans originated by USACM  
25 are irrelevant, as a matter of law, to whether the loan servicer is entitled to default interest and late  
26 charges as servicing compensation when the direct lenders have not received payment in full of the  
27 principal amount of the loans.

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IT IS FURTHER ORDERED that, because all the LSAs provide that the loan servicer is entitled to default interest and/or late charges only if such sums are “collected from the Borrower,” the ruling in the Order that the loan servicer is not entitled to collect default interest and late charges as servicing compensation directly from the direct lenders applies equally to all the LSAs as a matter of law.

IT IS FURTHER ORDERED that, because all the LSAs provide that the loan servicer is entitled to “retain monthly . . . its annual servicing fee,” the ruling in the Order related to the loan servicer’s entitlement to one accrued annual servicing fee, based on the ultimate collection amount of each of the loans, not the principal amount of the loans, applies equally to all the LSAs as a matter of law. The Court’s ruling is also based on the undisputed fact that all loans originated by USACM were for a term of only one year. In addition, it is immaterial, as a matter of law, to the Court’s ruling that the LSAs contain varying servicing fee percentages.

DATED: 8-3-2010

~~THE HONORABLE ROBERT C. JONES~~  
~~UNITED STATES DISTRICT JUDGE~~

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20 JONES VARGAS

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